



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 4, 1997

Ms. Susan J. Barnett  
Assistant District Attorney  
Collin County Courthouse  
210 South McDonald, Suite 324  
McKinney, Texas 75069

OR97-0235

Dear Ms. Barnett:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 103428.

The Collin County District Attorney (the District Attorney") received a request for all of its records concerning the death of Michael Clement. You assert that the requested documents are not subject to the act as records of the judiciary. You also assert that the requested documents are excepted from required public disclosure based on Government Code sections 552.101, 552.108, and 552.111.

The records of the judiciary are not subject to the act. *See* Gov't Code § 552.003(B). You assert that, since the District Attorney presented the requested records to the Collin County Grand Jury, they are records of the judiciary.

The act does not apply to information within the actual or constructive possession of the grand jury. Open Records Decision No. 513 (1988) at 3. When an individual or entity acts at the direction of a grand jury as the grand jury's agent, information held or collected by the agent is within the grand jury's constructive possession. *Id.* Thus, information in a district attorney's actual possession may be in a grand jury's constructive possession if the information was prepared at the grand jury's direction. However, the fact that information a district attorney collected or prepared was submitted to a grand jury, taken alone, does not mean that the information is in the grand jury's constructive possession. *Id.* Thus, all records the District Attorney obtained at the direction of the Collin County Grand Jury are within the constructive possession of the Collin County Grand Jury. Such records are records of the judiciary, not subject to the act.

As you inform us that the requested documents were presented to the Collin County Grand Jury, the remaining documents, if any, must be withheld from public disclosure based on Government Code section 552.101. Section 552.101 excepts information that is confidential by law, including information made confidential by statute. Article 20.02(a) of the Code of Criminal Procedure states that "[t]he proceedings of the grand jury shall be secret." Thus, with regard to the information that is not within the Collin County Grand Jury's constructive possession, the information is protected from required public disclosure by section 552.101 in conjunction with article 20.02(a) of the Code of Criminal Procedure, as information that reveals the proceedings of the Collin County Grand Jury. *See id.* at 4. However, the autopsy report is made public by statute and must be released. Code Crim Proc. art. 49.25, § 11.

Given our conclusion above, we need not address the other exceptions to disclosure you raise. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 103428

Enclosures: Submitted documents

cc: Mr. Warren H. Clement  
P.O. Box 2008  
Dallas, Texas 75221  
(w/o enclosures)